

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

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Brian Du Boulay,

Plaintiff,

v.

Bank of America, N.A.; and DOES 1-10,  
inclusive,

Defendants.

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Civil Action No.: 1:15-cv-00756-MKB-JO

**FIRST AMENDED COMPLAINT**

For this First Amended Complaint, the Plaintiff, Brian Du Boulay, by undersigned counsel, states as follows:

**JURISDICTION**

1. This action arises out of the Defendants' repeated violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et. seq.* ("TCPA").

2. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that the Defendants transact business in this District and a substantial portion of the acts giving rise to this action occurred in this District.

**PARTIES**

3. The Plaintiff, Brian Du Boulay ("Plaintiff"), is an adult individual residing in Staten Island, New York, and is a "person" as defined by 47 U.S.C. § 153(39).

4. Defendant Bank of America, N.A. ("BOA"), is a New York business entity with an address of 1 Bryant Park, New York, NY 10036, and is a "person" as defined by 47 U.S.C. § 153(39).

5. Does 1-10 (the "Agents") are individual agents employed by BOA and whose identities are currently unknown to the Plaintiff. One or more of the Agents may be joined as

parties once their identities are disclosed through discovery.

6. BOA at all times acted by and through one or more of the Agents.

### **FACTS**

7. In or around October 2014, BOA began calling Plaintiff's cellular telephone, number 718-XXX-0460.

8. BOA called Plaintiff from telephone numbers 877-200-6150 and 805-579-9184.

9. BOA called Plaintiff using an automated telephone dialing system ("ATDS") and an artificial or prerecorded voice.

10. When Plaintiff answered calls from BOA he heard a prerecorded message instructing Plaintiff to wait for the next available representative or to call BOA back.

11. In or around November 2014, Plaintiff requested that BOA stop calling about Plaintiff's mortgage.

12. During the aforementioned call, Plaintiff explained that he is in court regarding the mortgage and that there were no new developments regarding that matter.

13. Nevertheless, BOA continued to call Plaintiff's cellular telephone at a harassing rate, placing up to three calls daily using an ATDS.

### **COUNT I**

#### **VIOLATIONS OF THE TCPA – 47 U.S.C. § 227, et seq.**

14. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

15. At all times mentioned herein and within the last four years, Defendants called Plaintiff on his cellular telephone using an automatic telephone dialing system ("ATDS") and a prerecorded or artificial voice.

16. Despite being directing to cease all calls, Defendants continued to place automatic telephone calls to Plaintiff's cellular telephone. As such, each call placed to Plaintiff was made in knowing and/or willful violation of the TCPA, and subject to treble damages pursuant to 47 U.S.C. § 227(b)(3)(C).

17. The telephone number called by Defendants was assigned to a cellular telephone service for which Plaintiff incurs charges for incoming calls pursuant to 47 U.S.C. § 227(b)(1).

18. The calls from Defendants to Plaintiff were not placed for "emergency purposes" as defined by 47 U.S.C. § 227(b)(1)(A)(i).

19. Plaintiff is entitled to an award of \$500.00 in statutory damages for each call made in negligent violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).

20. Plaintiff is entitled to an award of treble damages in an amount up to \$1,500.00 for each call made in knowing and/or willful violation pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C)

### **PRAYER FOR RELIEF**

**WHEREFORE**, the Plaintiff respectfully prays that judgment be awarded in the Plaintiff's favor and against the Defendants as follows:

1. Statutory damages of \$500.00 for each violation determined to be negligent pursuant to 47 U.S.C. § 227(b)(3)(B);
2. Treble damages for each violation determined to be willful and/or knowing pursuant to 47 U.S.C. § 227(b)(3)(C); and
3. Such other and further relief as may be just and proper.

### **TRIAL BY JURY DEMANDED ON ALL COUNTS**

Dated: March 11, 2015

Respectfully submitted,

By /s/ Sergei Lemberg

Sergei Lemberg (SL 6331)  
LEMBERG LAW L.L.C.  
1100 Summer Street, 3<sup>rd</sup> Floor  
Stamford, CT 06905  
Telephone: (203) 653-2250  
Facsimile: (203) 653-3424  
Attorneys for Plaintiff

**CERTIFICATE OF SERVICE**

I hereby certify that on March 11, 2015, a true and correct copy of the foregoing was served electronically by the U.S. District Court Eastern District of New York Electronic Document Filing System (ECF).

By /s/ Sergei Lemberg  
Sergei Lemberg